

State Records Committee Meeting

Division of Archives,
Courtyard Meeting Room
December 12, 2013
Salt Lake City, Utah

SRC APPROVED

Date January 7, 2014
JHM

Members Present: Marie Cornwall, Citizen Representative
David Fleming, Private Sector Records Manager
Lex Hemphill, Media Representative
Doug Misner, History Designee
Holly Richardson, Citizen Representative
Ernest Rowley, Elected Official Representative
Patricia Smith-Mansfield, Governor's Designee

Legal Counsel: Paul Tonks, Attorney General's Office
Chiarina Bautista, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Matt Anderson, AAG, Utah Department of Corrections
Kathy Boudous, AAG, Department of Workforce Services
Roger Bryner, Petitioner
Michelle Buswell, Utah Department of Corrections
Brice DeJulio, Utah Department of Corrections
Nathan Harrison, Department of Workforce Services
Lorianne Ouderkirk, Archives staff
Greg Peaz, Utah Department of Corrections
Gina Proctor, Utah Department of Corrections
Rebekkah Shaw, Archives staff
Lynn Thomas, Department of Workforce Services
William Spencer Topham, Cottonwood Heights
Renee Wilson, Archives staff
Suzanne Young, Utah Department of Corrections

Hearing -- Roger Bryner vs. Cottonwood Heights, a continuation

The meeting was called to order at 9:00 a.m. by Lex Hemphill, Chair of the committee. He explained the procedures to the parties.

Opening statement – petitioner

Mr. Roger Bryner, the petitioner, said the city had failed to classify the records. He had not received sufficient response to request number 10 which was for all communications between any employees of Cottonwood Heights about Mr. Bryner and his requests. He asked to be able to inspect the records in request number 7 without charge. He said all records were presumed to be public, and since the city did not cite reasons for denial of the records, he should be able to inspect the records before paying for any copies.

Opening statement – respondent

Mr. Spencer Topham said the city had responded to the requests in full. There were no records responsive to #10 and no internal emails or communications were found when a search was made using the search terms “Roger” and “Bryner.” He said he had brought a sampling of 50 of the GRAMA requests made to the police department within the last year for which no fee was charged. The city estimates that there were 615 requests for which no fee was charged either because the requester was a crime victim or the request was from a government agency and so no fee was charged. If Mr. Bryner wanted to narrow his request, an estimate of the charge to redact the private information from the records would be provided. The 50 unredacted copies of records had been brought for in camera review by the committee. For the request for internal or written communications regarding the letter from Attorney David W. Brown to Chief Russo, there were no responsive records. The city had a policy of keeping records until administrative needs ended and any responsive emails either did not exist or had been destroyed according to the retention policy.

Testimony – petitioner

Mr. Bryner said he had been arrested for flipping off someone. He had been treated with disrespect at the police station when he asked for records. Any emails concerning him should be public records. A search could be made for anything that mentioned Bryner. There should be a filter for the results. If 100 requests were between agencies, the search could be for anyone named Bryner accused of a crime. Public records should be open to the public. Mr. Bryner said he believed the search had not been done correctly.

Testimony – respondent

Mr. Topham said the committee had allowed charges to be made for the records produced in the Beckham case before the State Records Committee # 2004-09. The charges included time spent to redact the records. Mr. Topham presented an affidavit from Mr. Brackenberry, an IT specialist, who had searched for the requested records created over an 18 month period of time using Bryner as a search term. Regarding the letter Mr. Bryner said he sent to Attorney Brown, there were no records found. Approximately 100 govt. agencies were not charged a fee. Mr. Hemphill asked Mr. Topham if the search were reduced to 100 items would the city be able to provide the records for no charge. Mr. Topham said the initial estimate for the charge was based on 5 minutes of staff time to redact each record. The lowest paid staff member capable of doing the job earned \$21 an hour. Transitory correspondence followed the retention schedule 1-42 on the state schedule, he said, and the city applied the retention schedule consistently.

Closing – petitioner

Mr. Bryner said it was a legal question whether an agency could charge for redacting a record. The names and contact information for government agencies should not be redacted. He did not think a governmental entity could charge for inspection of public records. The affidavit from Mr. Brackenberry shows the existence of public records. He said a simple search could produce everything related to Bryner.

Closing -- respondent

Mr. Topham said the city could provide Mr. Bryner with the records to inspect, but that the private information would have to be redacted. Staff email names and addresses are not part of the private information that would be redacted. Mr. Topham said in the Beckham case of 2004-09, after considering the evidence, the committee ruled that reasonable charges were sustained and a fee waiver denied. Ms. Smith-Mansfield said the committee had the right to reverse a former decision. Utah Code 63G-2-203(2)(a) authorized charging the direct cost of staff time and administrative costs to comply with a records request. Mr. Rowley said according to Utah code 63G-2-203(4) a governmental entity is encouraged to fulfill a records request without charge when the individual is the subject of the records or the requester's legal rights are implicated. Ms. Smith-Mansfield made a motion to go in camera to review the records the city brought in response to request #7. Mr. Fleming seconded the motion. The vote was unanimous to go into closed session.

Closed Session 9:50 a.m. to 10:12 a.m.

At 10:12 a.m. a motion was made by Ms. Smith-Mansfield to return to open session. Mr. Fleming seconded the motion. The vote was unanimous to return to open session. Ms. Richardson was excused at this point.

Deliberation

Ms. Smith-Mansfield said that the GRAMA request forms contained Driver's License information which was exempt from GRAMA. There was also data such as individual email addresses that could become public if the requests came to a hearing. Mr. Rowley said the time to redact the records should be the actual time, not an estimate of time. Ms. Smith-Mansfield made a motion that the records were correctly classified as public except for driver's license information which was restricted by 63G-2-201(3)(b). The city could only charge the actual cost for the lowest paid employee capable of the search, retrieval, and other administrative costs of providing the records. Mr. Tonks cited Utah Code 63G-2-302(j)(iii) that the personal email address in a voter registration record was considered private. The motion was withdrawn. Mr. Fleming made a motion that the GRAMA requests were correctly classified as public with the exception of driver's license information and personal email addresses and the city could charge a reasonable fee for the actual cost of providing the records for inspection. Ms. Cornwall seconded the motion. A vote was taken. Ms. Smith-Mansfield and Mr. Rowley voted against the motion. Mr. Hemphill, Ms. Cornwall, Mr. Misner, and Mr. Fleming voted in favor of the motion. The motion passed 4 to 2. Mr. Fleming made a motion that in regard to request # 10, the city had complied with the request. Ms. Smith-Mansfield seconded the motion. The vote was 6 to 0 in favor of the motion. Mr. Hemphill said an order would be sent within 7 days to the parties involved.

Hearing—Reginald Williams vs. Department of Workforce Services

Reginald Williams was contacted at the Utah State Prison. Kathleen Bounous represented the Department of Workforce Services (DWS) as the respondent. Mr. Hemphill explained the procedures to the parties.

Opening – petitioner

Mr. Williams said he had requested records from Nate Pearson, the finance director of the Department of Workforce Services (DWS). He had requested financial records for a grant received by DWS on August 14 and on Aug 25 he received a response that the records were protected. He appealed for a hearing. GRAMA allowed for the release of the record requested which documented the expenditure of funds by a governmental entity. He had requested bank statements for a stimulus funding block grant, the account statements, and the contract with the financial institution administering the grant. In denying the request, DWS had incorrectly cited Utah Code 63G-2-305(11) instead of (12). Mr. Williams said under Utah Code 63G-2-301(3)(e) the expenditure or receipt of funds by a government agency were normally public. The records he requested dealt with the receipt and expenditure of funds from the grant account. He asked for statements from the account to show how the fund was operating.

Testimony – respondent

Ms. Bounous said the contracts with the financial institutions that administer grants are maintained by the State Treasurer's Office. The bank statements represent all the combined funds from the American Recovery Reinvestment Act. All programs run by DWS in the state are represented in the bank statements and it is not possible to distinguish which amounts are associated with which programs. Mr. Nathan Harrison, finance director for DWS, was sworn as a witness. He said information about the contracts had been provided to Mr. Williams previously through the State Treasurer's Office. The bank statements contain unique account numbers that would have to be redacted. The first and last bank statements for the duration of the grant are available but would not provide the information Mr. Williams is looking for, because all the funds for different grants are together. Mr. Harrison said the transparency website has information specific to the funding of the stimulus grant and would contain information to the level of detail Mr. Williams is requesting. Mr. Misner said it would be difficult for a person who had no access to the website to know what records to ask for.

Closing –petitioner

Mr. Williams said he wanted records that would be useful to a requestor who had no access to the website. He said he knew he had not asked for the right records. Expenditures and deposit statements would be more informative specific to the grant he was interested in. The statements for the specific grant would be the records he was seeking.

Closing – respondent

Ms. Bounous said the contracts with the financial institutions that administer grants are maintained by the State Treasurer's office. Statements for each specific grant could be requested, but the bank statements requested would not provide the information Mr. Williams was seeking.

Deliberation

Mr. Hemphill made a motion that portions of the records were properly classified as protected, but the documents could be released with redactions of the account numbers.

Mr. Rowley seconded the motion. A vote was unanimous in favor of the motion. Mr. Hemphill said an order would be sent within 7 days to the parties.

Training in open and public meetings – Paul Tonks

Hearing -- Damon Crist vs. Utah Department of Corrections (UDC)

Mr. Hemphill was connected to Mr. Crist at the Utah State Prison and welcomed Matthew Anderson who represented the respondent, the Utah Department of Corrections.

Opening – petitioner

Mr. Crist said that on September 23, 2013, he had requested the disciplinary records of a public official, a doctor employed at the prison. He said the behavior of a government employee warranted accurate information to be released to the public. It was not abuse to request the disciplinary record. The fact that Dr. Kenneth Tubbs treated inmates was used by corrections to classify the records as protected. The records were denied by citing Utah Code 63G-2-305(13), as records that, if disclosed, would jeopardize the security or safety of a correctional facility.

Opening – respondent

Matthew Anderson, representing UDC, said that Dr. Tubbs was employed at the prison and treated inmates on a regular basis. He said that medical professionals at the prison are POST certified officers. Their disciplinary records are exempt from disclosure and their release could jeopardize the life and safety of the institution, other medical professionals, and the inmates. He said that witnesses would provide testimony and reasons why the records are protected.

Testimony – petitioner

Mr. Crist said he believed the disciplinary records should be public. He said the records were denied under Utah Code 63G-2-305(11) and (13), as records the disclosure of which would jeopardize the life or safety of an individual. He said the inmates were shackled when they were seen by a doctor and the allegation that they posed a threat to a doctor was not grounded in fact. He said under section (13), the reference to the safety of the facility or to interference with an offender's incarceration, treatment, probation or parole was probably intended for the release of records such as blueprints or schedules of officers within the prison. The disciplinary records of a public official ought to be public. Whether an inmate may or may not want to see a certain doctor is already apparent. The statements provided by the state do not have relevance. There are safety and security issues, but the disciplinary records of a staff member do not rise to the level of a safety and security issue. There is an active lawsuit in district court against Dr. Tubbs. Mr. Crist said he believed fraudulent reports were filed by the doctor about him.

Testimony – respondent

Michelle Buswell was called as a witness. She said she serves as nursing director, and supervisor of the nursing staff at the prison. Her responsibilities include setting protocol, administering services, overseeing the grievance process, case management, and hospice services. She started her career in 1997, and became a registered nurse in 1977. After she graduated, she worked in Utah County and had experience in the psychiatric and

emergency units of hospitals. The differences in medical services in a prison setting include access or finding ways to navigate the custodial setting. The clientele is adept at avoiding accurate assessment in response to questions. Responses can include feigning symptoms, malingering, and faking symptoms for secondary gain. There is a difference in willingness to accept treatment. Ms. Buswell has experienced resistance from inmates to questions, guarded responses, and has felt physically threatened. The setting of the prison is intimidating. The demeanor of patients is unlike a public setting. The F-word is used frequently, profanities are common, and prisoners are negative and sometimes combative. Medication seeking is common. A demand to see different professionals and attempts to manipulate staff occur occasionally in a community setting, but are a daily occurrence in prison. When the staff is threatened the staff has access to officers. Visits are terminated if a staff member feels threatened or is injured. The safety of the nurse or doctor and other staff has to be weighed along with the care of the patient. Errors in judgment can be made and life threatening situations can result. Any personal information about a staff member could distract from the issue at hand or be used against the professional. Disciplinary information should remain protected. It would be distributed through the inmate community and be used in a negative way. Complaints against nurses are investigated for validity. If a conduct issue is lengthy, the staff member could be reminded of the need for professionalism. If licensure is in question, the issue is reported to the Department of Professional Licensing (DOPL). A completed disciplinary record would consist of the reported misconduct, a department investigation, a finding, and a notice of discipline imposed.

Deputy Warden Brice DeJulio was called as a witness. He said he was responsible for the clinical services bureaus in both the Gunnison and the Draper facilities. He said he had been employed by the Department of Corrections for 26 years. His assignment was the supervision of all doctors and nurses assigned to the prisons. He said when the inmates were not satisfied with the providers in their areas they would try to get different opinions or doctors. There were not that many providers to choose from. An issue could be created between doctors. There were many health care requests and inmates could use a request to confront doctors. A disciplinary issue or an identified weakness could be used against a doctor. There was a sense of entitlement among inmates, but there was also an avenue for inmates to address policy violations and a grievance procedure. Doctors are correctional officers and their disciplinary records are protected. Public records, according to Utah Code 63G-2-301(3)(o) are records that would disclose information related to formal charges or disciplinary actions against a past or present governmental entity employee if the disciplinary action has been completed, all time periods for administrative appeal have expired, and the charges on which the disciplinary action was based were sustained. But in the correctional setting, the records are classified as protected.

Closing – petitioner

Mr. Crist said personal information about the doctor was not part of his request and was not necessary. He had requested official disciplinary action against a public employee and wanted to use the information to provide accurate information to the legislature in a petition he was preparing. He said he wanted to inspect the information and did not need

a copy. There was a lawsuit against Dr. Tubbs. GRAMA warrants the release of the information as a public record.

Closing -- respondent

Mr. Anderson said it was appropriate for there to be checks against improper behavior and use of power. Through the grievance process inmates' complaints can be investigated. The Department of Professional Licensing is the agency equipped to do that. Records can be shared between agencies. The Clinical Services Bureau can be audited. An inmate has access to the courts and a judge can decide if a disciplinary record can be released and can impose restrictions on the information. Once a record is declared public, it may be released to anyone who asks for it. The medical professionals at the prison expose themselves to risk as part of the job on a daily basis. The requested records should maintain the classification of protected.

Deliberation

Ms. Smith-Mansfield made a motion that the records are appropriately classified by the agency pursuant to Utah Code 63G-2-305 (11) and (13). Disciplinary records are normally public pursuant to 63G-2-301(3) but in this case the circumstances warrant the protected classification for a present employee of the Department of Corrections. The motion was seconded by Mr. Fleming. A vote was unanimous in the affirmative.

Retention schedules

Ms. Rebekkah Shaw of the Archives staff presented the following retention schedules for approval:

1. Bond official transcripts 30442. Retention: 5 years after maturity and then to archives as permanent.
2. Notes and Coupons Paid 30444. Retention: 3 years after maturity and then destroy.

Ms. Smith-Mansfield made a motion to approve the two retention schedules. Mr. Fleming seconded the motion. A vote was unanimous in favor of the retention schedules.

3. Department of Commerce Division of Securities 80729 Investigation case files. Retention 50 years after investigation closes.

A motion was made by Mr. Fleming to not approve the Department of Commerce retention schedule, but to ask about the nature of the records and to keep the records in line with the common practice. Ms. Smith-Mansfield seconded the motion. A vote was unanimous in favor of the motion.

Report of appeals received

Ms. Mumford presented a list of appeals received during the month. See the attached document.

Cases in District Court

Mr. Tonks reported that there were no new SRC cases in District Court.

The meeting was adjourned at 2:07 p.m.

STATE RECORDS COMMITTEE MEETING

December 12, 2013

9:00 a.m.

AGENDA

HEARINGS

1. **Continuance: Roger Bryner vs. Cottonwood Heights.** Mr. Bryner is appealing the denial of records from the police department, GRAMA requests, and emails. He is also appealing the denial of a fee waiver.
2. **Reginald Williams vs. Department of Workforce Services.** Mr. Williams is appealing the denial of records related to a specific block grant.
3. **Damon Crist vs. Utah Department of Corrections.** Mr. Crist is appealing the denial of records related to the disciplinary record of a medical doctor.

BUSINESS

Approval of November 21, 2013, SRC Minutes, action item

Approval of retention schedules, action item

Open and Public Meeting training for SRC members, Paul Tonks

SRC appeals received

Cases in District Court

Other Business

ADJOURNMENT

**SRC Appeals Received
December 2013**

1. **13-32 Salt Lake School District vs. Utah State Auditor's Office.** The District is appealing the denial of copies of complaints against the school district received by the Auditor's Office. Hearing postponed until January 2014 at the request of the petitioner.
2. **13-39 Constable J. Scott Stowers vs. Tax Commission, Department of Motor Vehicles.** Mr. Stowers is appealing the denial of direct access to DMV records. Resolved between parties.
3. **13-40 Nate Carlisle, Salt Lake Tribune vs. Roy City.** Mr. Carlisle is appealing the denial of records pertaining to an investigation by the Layton City Attorney's Office. Hearing postponed until January 2014 at the request of the petitioner.
4. **13-43 Harshad Desai vs. Garfield County School District.** Mr. Desai is appealing the denial of records of applicants, positions, employees and former employees of the Garfield County School District. Garfield School District has a separate records ordinance. The SRC has no jurisdiction.
5. **13-47 Lee Davidson, Tribune vs. Utah State Tax Commission.** Mr. Davidson is appealing the denial of records related to policy decisions in same sex marriage filings. Scheduled for January 2014.
6. **14-01 William Hill vs. Utah Department of Corrections.** Mr. Hill is appealing the denial of his PSI report. Incomplete.
7. **14-02 Mark Kimball vs. Utah Department of Corrections.** Mr. Kimball is appealing the denial of a record of inmate co-payment charges. Incomplete.
8. **14-03 Robert B. Sykes vs. Career Service Review Office.** Mr. Sykes is appealing the denial of a transcript of the Step 4 hearing regarding the termination of former trooper Lisa Steed. Scheduled for January.
9. **14-04 Deborah Reithmuller vs. Bd. Of Pardons & Parole.** Ms. Reithmuller is appealing the denial of a fee waiver for records requested from the board. Scheduled for January.

Utah State Archives

Parent Agency:

Error - Agency Does Not Exist
Error - Agency Does Not Exist

Agency:**Records Officer**

30442 BOND OFFICIAL TRANSCRIPTS
30444 BONDS, NOTES AND COUPONS PAID

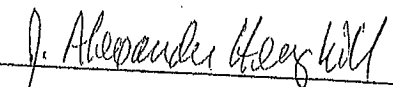
Destroying records in accordance with this agency Retention Schedule is in compliance with the Archives and Records Service and Government Records Access and Management Act (UCA 63-2-101 et seq.).

The Agency classifies its records under provisions of the Government Records Access and Management Act (UCA 63-2-101 et seq.). Classifications have not been approved by the State Records Committee.

This agency retention schedule was approved by the State Records Committee in December 2013.



Susan Mumford
Executive Secretary
State Records Committee



Chair
State Records Committee

Utah State Archives

AGENCY: ????????????????????

SERIES: 30442

TITLE: BOND OFFICIAL TRANSCRIPTS

DATES:

ARRANGEMENT:

DESCRIPTION:

Official files regarding authority to issue bonds (general obligation or revenue). Records may include Indenture of Trust, leases, authorizing resolutions, offering documents, certificates, specimen bonds, etc.

RETENTION:

Permanent.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

PRIMARY CLASSIFICATION:

Public

Utah Code 67-4-1(1)(h) (2013) Utah Code 17-24-1 (1)(2013)

Utah State Archives

AGENCY: ????????????????????

SERIES: 30444

TITLE: BONDS, NOTES AND COUPONS PAID

DATES:

ARRANGEMENT:

DESCRIPTION:

These are trustee and/or paying agent related records. Included are book entries, statements and payment confirmations.

RETENTION:

Retain for 3 years after final maturity and then destroy.

FORMAT MANAGEMENT:

The retention and disposition information on this schedule applies to the record copy which can be in any format. The record copy can include different formats. Format management information provided here is for the purpose of managing records that are being either stored by or transferred to Utah State Archives.

PRIMARY CLASSIFICATION:

Public

Utah Code 63G-2-301(2013)